

WEBINAR

WEDNESDAYS



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Non-Fatal Strangulation Cases

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ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL

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Prosecuting Strangulation



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But these cases are HARD!

- There are many issues at trial.
 - Uncooperative victims
 - Minimal corroboration
 - ✦ No visible injuries in 50% of cases
 - ✦ Often no witnesses
 - ✦ Regularly no physical evidence
 - ✦ Conflicting statements from suspect
 - Problems with investigation
 - Juror miseducation
- How do we combat these issues?
 - First—attorney education!



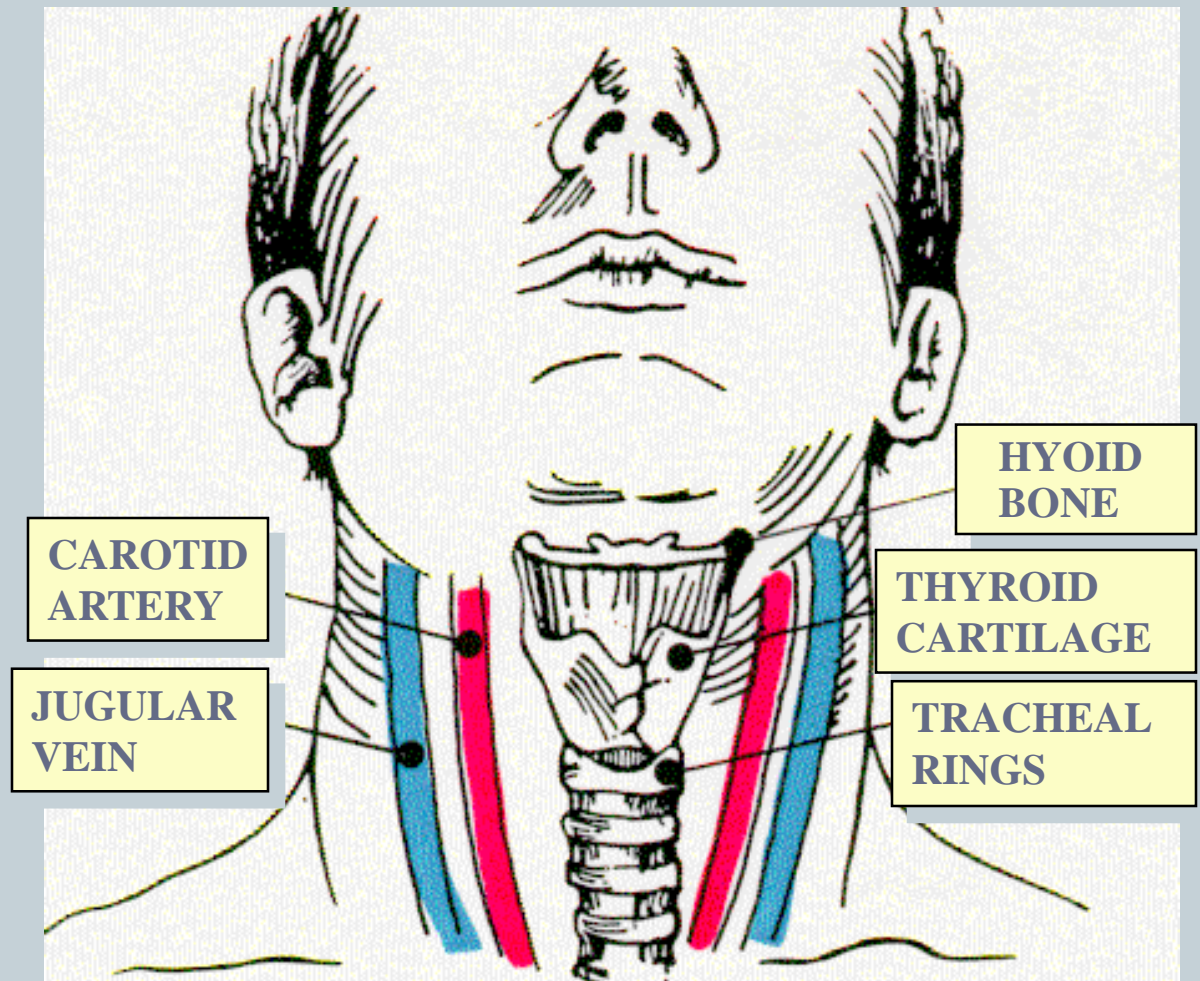
A.R.S. 13-1204(B): Strangulation



- This is what we have to prove at trial:
- Defendant committed an assault by either:
 - intentionally, knowingly or recklessly causing any physical injury to another person,
 - intentionally placing another person in reasonable apprehension of imminent physical injury or
 - knowingly touching another person with the intent to injure the person
- **AND Defendant intentionally or knowingly impeded the normal breathing or circulation of blood of another person...**
 - by applying pressure to the throat or neck
 - or by obstructing the nose and mouth
 - either manually or through the use of an instrument.
- **AND Defendant and victim were in a DV relationship.**
 - Don't forget this element!!!

What Strangulation Does

- Jugular vein: brings deoxygenated blood from head back to heart.
- Carotid artery: supplies head and neck with oxygenated blood.
- Trachea: windpipe.
- Strangulation can block all three—preventing blood and airflow to the brain.



What Strangulation Does (continued)



- 4.4 pounds of pressure can close the jugular veins.
- 11 pounds of pressure can close the carotid arteries.
- 30 pounds of pressure can close the trachea.
- To put this in perspective...
 - It only takes 4-6 pounds of pressure for a trigger pull.
 - It only takes 22 pounds of pressure to open a can of soda.



“Strangulation” vs. “Choking”



- Strangulation: occurs when external pressure is applied to the neck, closing blood vessels and/or air passages.
- Choking: occurs when an object gets into the airway and blocks air flow internally.
- Victims often use “choking” to mean “strangulation.”



Physical Injuries: Marks to Neck



- Scratches, abrasions, bruises, fingernail marks, ligature marks, etc.
- Consider victim's description of strangulation- do injuries match?
- Rare to have extreme bruising/marks.



Physical Injuries: Petechiae



- Burst blood vessels from constriction of blood flow.
- Most common in eyes, back of throat, ears, neck.
- Lack of petechiae does not mean victim was not strangled.

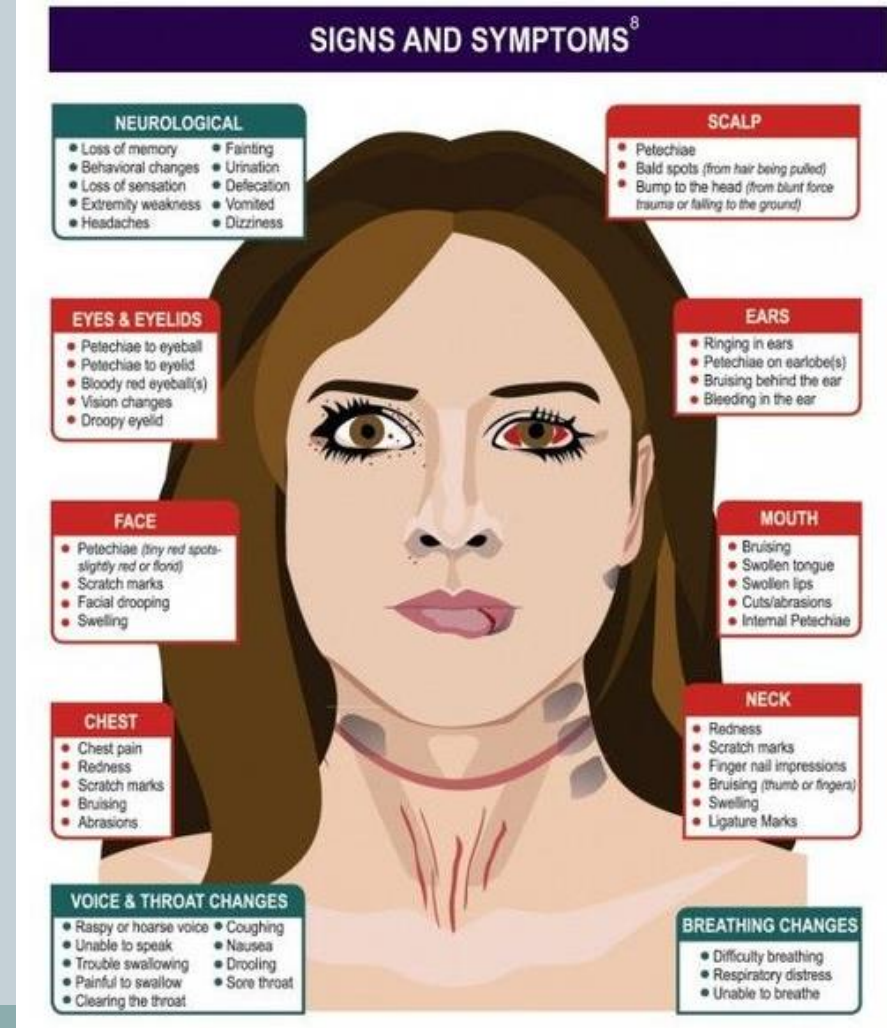


Physical Injuries: Hemorrhages to Eyes



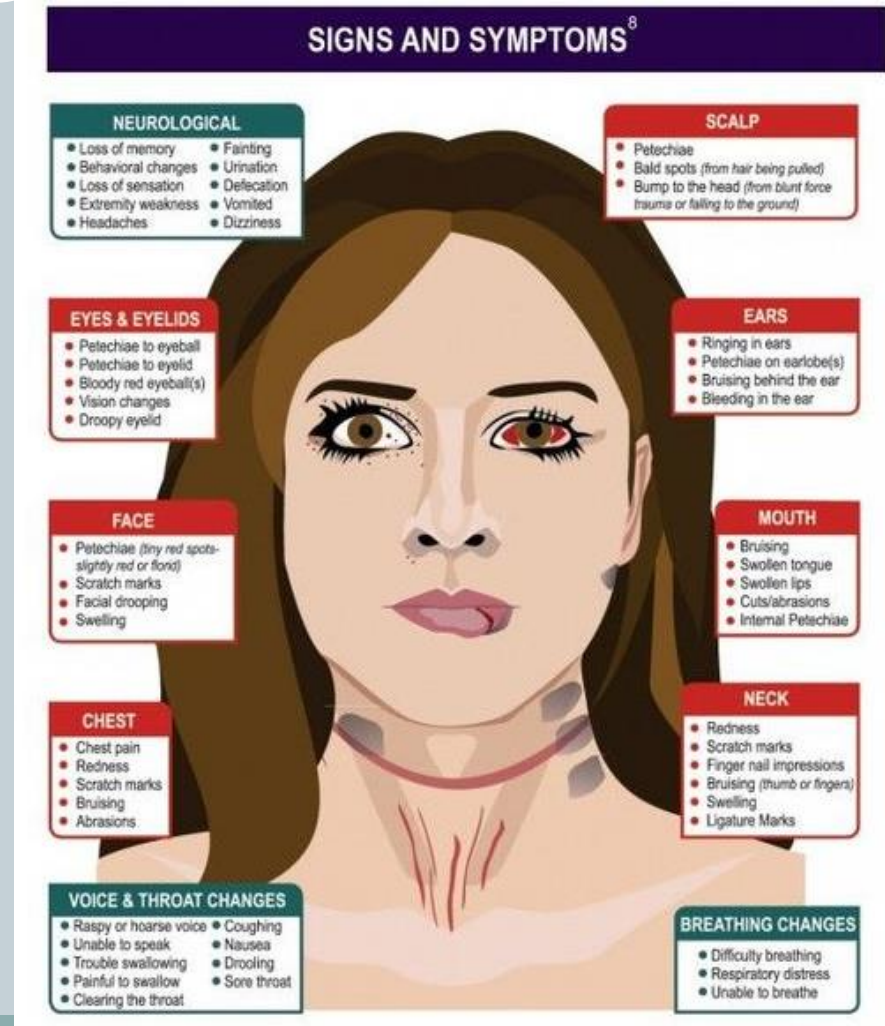
Signs and Symptoms

- Loss of consciousness
 - Common for victims to have memory lapses when they lose consciousness.
- Involuntary urination/defecation
 - Ask if victim is wearing the same clothes she wore during assault.
- Dizziness, nausea, vomiting, headache
- Difficulty breathing



Signs and Symptoms (continued)

- Voice changes: hoarseness, change in pitch, raspy voice, loss of voice, coughing.
- Throat changes: difficulty swallowing, painful swallowing, external throat pain, coughing, clearing of throat, drooling.
- Breathing changes: hyperventilation, having trouble catching breath, difficulty breathing, coughing.
- Vision and hearing changes: blurry vision, fuzzy hearing, etc.



Forensic Nurse Exam



- What happens?
 - Specially trained nurse.
 - Called to FAC or hospital.
 - Checks vitals.
 - Obtains medical history.
 - Obtains description of assault.
 - Documents symptoms & injuries.
 - Photographs injuries.
 - Discharge instructions.
- FNE is for medical treatment, not evidence collection!



Issues at Trial



- There are a lot of them!
 - Uncooperative victims
 - Minimal corroboration
 - ✦ No visible injury in 50% of cases
 - ✦ Often no witnesses
 - ✦ Regularly minimal physical evidence
 - ✦ Conflicting statements from suspect
 - Problems with investigation
 - Juror miseducation
- How do we overcome these issues?

Combating Trial Issues: Juror Education

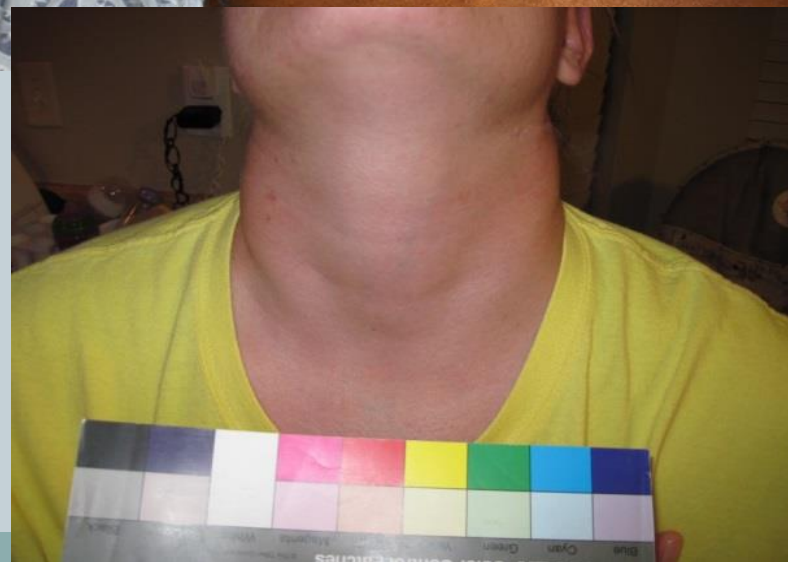
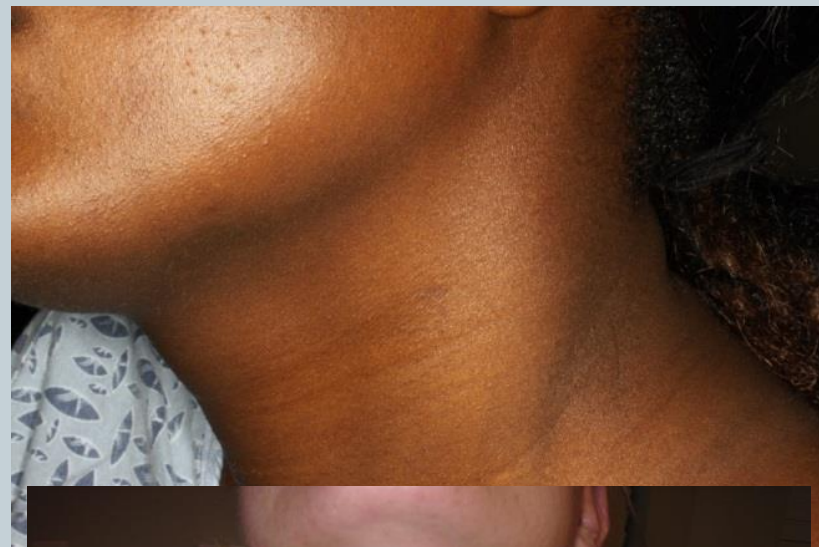
- Must educate your jurors!
- Use your experts!
 - Case agent.
 - ✦ General domestic violence issues.
 - Cycle of violence, recantation.
 - Forensic nurse.
 - ✦ Mechanics of strangulation
 - ✦ Lethality of strangulation
(make the jury care!)
 - ✦ No physical injury = no big deal
 - **PREP YOUR EXPERTS!**
 - ✦ Many have never testified before!
 - ✦ Make sure they are comfortable testifying on these subjects!



Juries expect to see this...



But usually we get this...



Combating Trial Issues: Minimal Injuries



- Lack of physical injury means NOTHING!
- Forensic nurse can testify to this.
- San Diego Strangulation Study, 2013.
 - Most victims lacked physical evidence of being strangled.
 - ✦ 50% of cases, no visible injury
 - ✦ 35% of cases, injury too minor to photograph
 - ✦ 15% of cases had injuries significant enough to photograph
 - ✦ 3% of victims sought medical attention
- It is possible to strangle someone to death without leaving any external marks.

Combating Trial Issues: Victim Problems

- “Cooperative” victim
 - Never expect cooperation.
 - Pretrial preparation is key.
 - Details, details, details.
 - ✦ Details increase victim’s credibility.
 - What did she hear, see, smell, feel, during assault?
 - What was she thinking during the assault?
 - How did she feel after?
 - ✦ Physical symptoms.
 - Exactly how was she strangled?
 - What is her response to his story?



Combating Trial Issues: Victim Problems



- Uncooperative victim
 - Just need to get her to court!
 - ✦ Strategies
 - Be prepared for anything:
 - ✦ Memory issues
 - Real or feigned?
 - ✦ Minimizing
 - ✦ Recanting
 - ✦ Hostile witness
 - Impeach, impeach, impeach!
 - Use body cam footage to show demeanor/symptoms.



Victims are like a box of chocolates...

Combating Trial Issues: Victim Problems



- Missing victim.
 - Can you prove it without her?
 - ✦ 911 call—is it coming in?
 - ✦ Witnesses
 - Did anyone see the actual strangulation?
 - Can anyone identify D?
 - ✦ Statements to forensic nurse
 - Will your FNE come in?
 - ✦ Forfeiture by wrongdoing.
 - Get those jail calls!
 - Pretrial litigation is key.

Combating Trial Issues: Minimal Corroboration



- **Combat investigation issues by acting FAST!**
 - Furthers are your friend.
 - Don't be afraid to ask your case agent for more!
- **Locate all potential witnesses**
 - 911 caller
 - Children over 5
 - Other adults in home
 - Friends or family contacted after assault
 - Neighbors
 - Paramedics and other medical personnel
- **Just because they weren't interviewed that night doesn't mean they can't be located and interviewed now!**

Combating Trial Issues: Minimal Corroboration



- **Jurors like STUFF**
 - Appeal to different learning styles.
 - Combat boredom!
- **Be creative!**
 - Physical evidence from scene—broken phone, wet pants, etc.
 - Photographs of scene
 - Surveillance video?
 - Maps, charts, diagrams.
 - Play audio/video: 911 call, voicemail messages, body cam footage
 - Blow up those text messages!



Combating Trial Issues: Minimal Corroboration

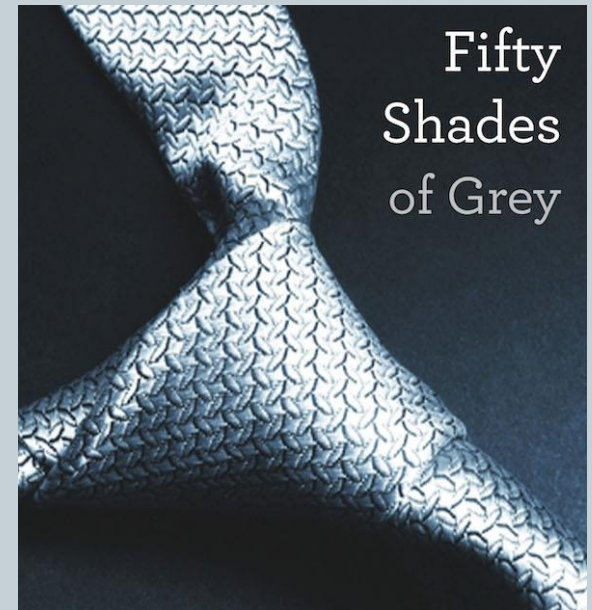


- No Forensic Nurse Exam?
 - All hope is not lost!
 - Look for:
 - ✦ Photos of injuries
 - ✦ Good description of symptoms in DR
 - ✦ Body camera footage of symptoms, injuries?
 - ✦ Other medical treatment? Paramedics, hospital?
 - At trial, call forensic nurse to discuss strangulation in general.
 - ✦ Sometimes use nurse to discuss photos of injuries and description of symptoms, even if she didn't personally exam victim.

Combating Trial Issues: Common Defenses



- Self-defense
 - Photographs of suspect—no injuries?
 - Size difference
 - Witnesses?
- Rough sex
 - Talk to your victim!
 - Any corroboration?
 - Vic seen with prior injuries?
- “She’s making it all up to get me in trouble.”
 - Consider everything she has had to do—why would she bother?
 - Does she have a motive to lie?
 - How many people would have to lie to keep the conspiracy going?



Pretrial Litigation



- Motions in Limine
 - Preclude...
 - ✦ Victim issues
 - ✦ D self-serving hearsay
 - Admit...
 - ✦ FNE statements w/out victim.
- 404(b)—get in prior DV
- Crawford—get in that 911 call!
 - Though you don't always want to...
- Consider forfeiture by wrongdoing
 - Get those jail calls!



Voir Dire



- Consider: Who will be resistant to the facts of your case?
 - Identify problems—recanting victim, victim/witness baggage, bad investigation, bad facts, etc.
- Sample questions:
 - Does anyone agree with this statement: “Domestic violence is often blown out of proportion by the police and criminal justice system”?
 - Does anyone feel that it is wrong for the government to get involved in a domestic violence case?
 - Is there anyone here who believes that if a victim does not agree with prosecution, the state should not proceed with the case?
 - How many of you think that it is impossible for the victim to still care for an abusive partner after the abuse is over?

Obstacles to Charging



- Major victim credibility issues
 - Massive motive to lie/bias
 - Severe impairment (DR documents signs/symptoms)
 - Inconsistent statements to officer, detective, nurse, other medical
- Major mutual combat concerns
 - Are suspect's injuries worse than victim's?
 - Did witness see victim start physical confrontation?
- No corroboration for victim's statements
 - No injuries/symptoms, no witnesses, no 911 call, no suspect statements.
 - Nothing puts suspect at the scene.
- Victim never said she couldn't breathe and did not have symptoms consistent with blood impairment
 - Charging attempted strangulation can be problematic.
- Weak case with no prior convictions- probably send to the city
 - If we can't charge a felony, it doesn't mean it wasn't misdemeanor assault
- Furthers are your friend!

Conclusion



- There are tons of resources available!
- When in doubt, ask others!!!
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- Questions?